Instructions for Form 541-B

Charitable Remainder and Pooled Income Trusts

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2001**, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2001. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information regarding California and federal law, please visit our Website at www.ftb.ca.gov and select "Law and Legislation" or "Forms and Publications." Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

Note, the instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

A Purpose

Use Form 541-B to report the financial activities of a charitable lead trust, a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund.

B Who Must File

The fiduciary or fiduciaries for all charitable remainder trusts as defined in IRC Section 664, pooled income funds as defined in IRC Section 642(c)(5), or charitable lead trusts must file Form 541-B for each calendar year. In addition, the fiduciary or fiduciaries must also file Form 541-A, Trust Accumulation of Charitable Amounts, to report the information required in R&TC Section 18635, unless all net income is required to be currently distributed.

C When to File

File Form 541-B on or before April 15, 2005. However, if you need additional time to file, California grants an automatic six-month extension. California does not require the filing of written extensions.

If the tax return is filed by the 15th day of the 10th month following the close of the taxable year (fiscal year) or by October 17, 2005 (calendar year), the extension will apply.

If **tax is owed,** see Specific Instructions, Part IV, Unrelated Business Taxable Income.

D Where to File

Mail Form 541-B to:

FRANCHISE TAX BOARD
PO BOX 942840
SACRAMENTO CA 94240-0002

E Trust Instrument

Do not file a copy of the trust instrument unless the Franchise Tax Board requests it.

F California Tax Exemption

A charitable remainder annuity trust or a charitable remainder unitrust is exempt from California income tax, except for years when it has unrelated business taxable income. Even though exempt from California income tax, such a trust must file Form 541-B for the calendar year.

G Final Return

For the last taxable year of a charitable remainder annuity trust or a charitable remainder unitrust, check the box labeled "Final Return" at the top of Form 541-B.

H Signature

The fiduciary or officer representing the fiduciary must sign Form 541-B. Any person preparing the fiduciary's return for compensation, who is not a regular full-time employee of the fiduciary, must also sign Form 541-B.

I Attachments

Use the schedules on Form 541-B unless you need more space. If you use attachments, they must:

- Show the form number and the taxable year;
- Show the trust's name and federal employer identification number;
- Include the information required by the form;
- Follow the format and line sequence of the form; and
- Be on the same size paper as the form.

J Internet Access

You can download, view, and print California tax forms and publications from our Website at **www.ftb.ca.gov.**

Specific Instructions

Part I Ordinary Income

Divide the trust's income (both current and cumulative) into three categories: (1) ordinary income, (2) capital gains and losses, and (3) nontaxable income.

Deductions are allocated as follows:

1. Allowable deductions directly attributable to one or more classes of income items (i.e., interest, dividends, or rents) or corpus are allocated to such income classes or to corpus.
2. Allowable deductions not allocated under 1 above are allocated on the basis of gross income after directly attributable deductions, to the extent of such income.
3. Allocate deductions (not allocated under 1 or 2 above) in any manner, even if the allocation results in a loss.

Allocate any expense that is not deductible in determining taxable income and not allocated to nontaxable income to corpus. Allocate all income and excise taxes to trust corpus.

The following deductions are not permitted in computing ordinary income, capital gains, or nontaxable income: federal, state, and local income and excise taxes, charitable contributions IRC Section 642(c); net operating losses, IRC Sections 172 and 642(d); distributions to beneficiaries, IRC Section 661; and capital loss carryovers, IRC Section 1212.

Part II Accumulation Schedule

Report the income (both current and cumulative undistributed) of the trust for purposes of determining the character of distributions in three categories:

- Ordinary income;
- Capital gains and losses; and
- Nontaxable income.

A loss in any one of the three categories may not be used to reduce a gain in any other category. For example, a capital loss may not be used to reduce ordinary income. However, a loss in any category may be used to reduce undistributed gain for prior years within that same category, and any excess may be carried forward to reduce gain in future years within that same category.

Part III Current Distributions Schedule

Annuity and unitrust amounts required to be distributed have the following characteristics to the recipients:

- First, as ordinary income to the extent of the trust's ordinary income for the current year and undistributed ordinary income for prior years.
- Second, as capital gain to the extent of the trust's undistributed capital gains.
- Third, as nontaxable income to the extent of the trust's nontaxable income using California law for the current year and undistributed nontaxable income using California law for prior years.
- Fourth, as trust corpus. The accumulation distribution provisions do not apply.

Furnish each recipient (beneficiary) listed in Part III with a Schedule K-1 (541), Beneficiary's Share of Income, Deductions, Credits, etc., that reflects his or her respective current distribution.

Part IV Unrelated Business Taxable Income

If the trust has any unrelated business taxable income within the meaning of IRC Section 512 and related regulations for the taxable year, the trust is taxable on all its income for the taxable year as a complex trust.

Complete and file a separate Form 541, California Fiduciary Income Tax Return, to report income and deductions and to compute the tax. Income and deductions, including the deduction for distributions to beneficiaries, are computed in accordance with the regular trust rules contained in the instructions for Form 541. However, the recipients will be taxed on amounts they receive in accordance with Specific Instructions, Part III. The grantor and substantial owner provisions do not apply.

File Form 541 before April 15, 2005. If you are unable to file Form 541 by the return's due date and a tax is owed, get form FTB 3563, Payment Voucher for Automatic Extension for Fiduciaries.

Part V Balance Sheet

Complete the balance sheet using the accounting method the trust uses to keep its books and records. All filers must complete column (a). All unitrusts must also complete column (b).

In completing column (b) for unitrusts, if an average value is used for more than one valuation date, enter "average" for the valuation date at the top of the column and report each valuation date in the attached explanation for line 55. Also, for purposes of this column, fair market value (FMV) includes both accrued income and accrued liabilities.

Line 26 – Cash

Enter the total amount of cash, including cash held in checking accounts, deposits in transit, change funds, petty cash funds, or any other non-interest bearing accounts. Do not include advances to employees or officers or refundable deposits paid to suppliers or others.

Line 27 – Savings and temporary cash investments

Enter the total amount of cash in savings or other interest-bearing accounts and temporary cash investments, such as money market funds, commercial paper, certificates of deposit, and U.S. Treasury bills, or other governmental obligations that mature in less than one year.

Line 28 – Accounts receivable

Enter the total accounts receivable and trade notes that arose from the sale of goods and/or the performance of services on line 28a. Enter the allowance for doubtful accounts on line 28b. Any receivables due from officers, directors, trustees, foundation managers, or other disqualified persons must be reported on line 29. Claims against vendors or refundable deposits with suppliers or others may be reported here if not significant in amount. If the amount is significant, report it on line 37, Other assets. Receivables due from other employees (including loans and advances) should be reported on line 37.

Line 29 – Receivables due from officers, directors, trustees, and other disqualified persons

Enter the total amount of all receivables and loans (including advances) due from officers, directors, trustees, and other disqualified persons. Attach a schedule providing information as follows:

- Report each loan separately, even if more than one loan was made to the same person or the same terms apply to all loans made. Salary advances and other advances for personal use and benefit and receivables subject to special terms or arising from transactions not functionally related to the trust's charitable purposes must be reported as separate loans for each officer, director, etc.
- Receivables that are subject to the same terms and conditions (including credit limits and rate of interest) as receivables due from the general public and that arose in connection with an activity functionally related to the trust's charitable purposes may be reported as a single total for all the officers, directors, etc. Travel advances made in connection with official business of the trust may also be reported as a single total.

For each outstanding loan or another receivable that must be reported separately, the schedule should show the following information:

- Borrower's name and title;
- Original amount;
- Balance due;
- Date of note;
- Maturity date;
- Repayment terms;
- Interest rate;
- Security provided by the borrower;
- Purpose of the loan; and
- Description and the FMV of the consideration furnished by the lender.

The above detail is not required for receivables or travel advances that may be reported as a single total. However, report and identify those totals separately in the attached schedule.

Line 30 through Line 36 – See the instructions for federal Form 5227, Split-Interest Trust Information Return, line 29 through line 35.

Line 37 – Other assets

Attach a schedule listing the value of all other assets not reported on previous lines.

Line 41 – Loans from officers, directors, trustees, and other disqualified persons

Enter the total unpaid balance of loans received from officers, directors, trustees, and other disqualified persons. For each loan outstanding at the end of the year, attach a schedule that provides the name and title of the lender and the information specified in the instructions for line 29.

Line 43 – Other liabilities

Both annuity trusts and unitrusts should include any advances from trustees on line 43. Unitrusts should also include any unitrust amounts applicable to prior years that are unpaid as of the valuation date since such amounts reduce the net FMV of the trust's assets.

Line 46 – Undistributed income, undistributed capital gains, and undistributed nontaxable income

Enter the total amount of undistributed income, undistributed capital gains, and undistributed nontaxable income.

Enter the unitrust fixed percentage (which may not be less than five percent) in the space provided on line 50a.

Enter the total accrued distribution deficiencies from previous years on line 52a. To determine the deficiencies:

1. Aggregate the unitrust's net asset FMV for each previous year.
2. Multiply 1 above by the unitrust's fixed percentage.
3. Subtract the aggregate trust income that was distributed for previous years from 2 above.

Line 53 – Enter the total 2004 unitrust distributions reported in Part III.